

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

AUGUST 14, 2000

IN RE:

**AT&T OF THE SOUTH CENTRAL STATES
TARIFF TO GRANDFATHER THE REACH
OUT TENNESSEE OPTIONAL CALLING
PLAN**

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DOCKET NO. 97-07632

ORDER DENYING TARIFF

This matter came before the Tennessee Regulatory Authority ("Authority") at the regularly scheduled Authority Conference held on May 4, 1999, for oral argument and deliberations concerning Tariff No. 97-07632 filed by AT&T of the South Central States, Inc. ("AT&T"). Upon review of AT&T's tariff and the entire record in this matter and after hearing oral argument by the parties, the Directors of the Authority voted unanimously to deny AT&T's tariff.

Background

AT&T's tariff to grandfather its Reach Out Tennessee Optional Calling Plan ("Reach Out Plan") was filed on December 19, 1997 with an effective date of January 19, 1998. The Authority issued a data request to AT&T on January 7, 1998 and AT&T provided its responses on January 12, 1998. On January 16, 1998, the Consumer Advocate Division of the Office of the Attorney General ("Consumer Advocate") filed a Petition to Intervene¹. AT&T agreed to not put the tariff into effect while a decision on the Petition to Intervene was pending. At a regularly

¹ In its Petition to Intervene, the Consumer Advocate alleged that this tariff violates Tennessee law and policy against discrimination among classes of users, including but not limited to T.C.A. §§ 65-4-115, 65-4-122(c), 65-5-204(a)(1) and 65-5-209(a).

scheduled Authority Conference on February 3, 1998, the Directors of the Authority approved the Consumer Advocate's Petition to Intervene and appointed General Counsel or his designee as Pre-Hearing Officer. This tariff was suspended by the Authority at the February 3, 1998 Authority Conference for sixty (60) days through April 3, 1998 and was re-suspended by the Pre-Hearing Officer for an additional sixty (60) days through June 5, 1998. On May 7, 1998, with the agreement of the parties, the Pre-Hearing Officer entered an Order suspending the tariff through the date of the decision in this matter.

A Pre-Hearing Conference was held on March 13, 1998, at which time AT&T orally moved that the Consumer Advocate file a more definite statement as to the allegations in its Petition to Intervene. AT&T's motion was granted by the Pre-Hearing Officer and the Consumer Advocate filed its More Definite Statement on March 16, 1998. On April 27, 1998, the parties filed Pre-Hearing briefs. Thereafter, the Pre-Hearing Officer determined, with the agreement of the parties, that further action in this docket would be postponed pending a decision and the issuance of the Authority's Order in Docket No. 97-01387, the United Telephone-Southeast Opportunity 800 tariff.

A Pre-Hearing Conference was held September 15, 1998 at which time the parties were directed by the Pre-Hearing Officer to file reply briefs two weeks after the Authority issued its final order in Docket No. 97-01387. The Authority's Order in Docket No. 97-01387 was issued on October 22, 1998. On October 26, 1998, AT&T provided to the Consumer Advocate a proposed affidavit for filing in this proceeding. AT&T's proposed affidavit stated that its decision to grandfather the Reach Out Plan was based on the following factors: a steadily declining number of customers using this service; the cost incurred in maintaining the service; the need, where feasible, to consolidate product lines and simplify billing; and the ready

availability of other services. Additionally, AT&T stated that it had no definite plan to terminate the Reach Out Plan and could not specify an anticipated date that the grandfathering period would end. AT&T did agree that it would file a tariff for the purpose of such termination and cessation of the grandfathering period.

In its Reply Brief filed on November 5, 1998, the Consumer Advocate responded to AT&T's proposed draft affidavit and provided the following reasons for its continued opposition to the tariff:

- 1) AT&T has not set forth sufficient reasons for the proposed grandfathering; in particular, AT&T has not set forth any technological reason the service cannot continue to be provided; and
- 2) AT&T has not met the criteria for grandfathering as set forth in the Authority's Opportunity 800 Order. (Docket No. 97-01387)

Following a telephonic Status Conference held on March 12, 1999, AT&T filed on March 30, 1999 the Affidavit of Larry S. Lyu to address the two concerns expressed in the Consumer Advocate's Reply Brief. In his Affidavit, Mr. Lyu referred to the declining customer base and AT&T's cost to maintain the service as the reasons for requesting that this service be grandfathered. Mr. Lyu expressed AT&T's willingness to abide by the terms of the UTSE Opportunity 800 Order but stated that AT&T had no plan at that time to terminate the service and therefore had not set an end date for the grandfathering. As an alternative to establishing an end date, AT&T proposed to file a tariff at an undetermined time in the future which would request termination of this grandfathered service. Mr. Lyu's Affidavit also stated that AT&T had agreed to provide to all existing customers written notice upon requesting termination of the service.

Notwithstanding the information in the affidavit of Mr. Lyu, the Consumer Advocate did not withdraw its objection to AT&T's Tariff. While both parties expressed that an evidentiary

hearing would not be needed, the parties did request the opportunity to present oral arguments to the Authority. Pursuant to that request, oral arguments were presented at the May 4, 1999 Authority Conference.

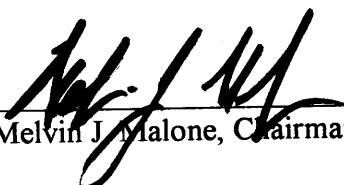
During oral arguments, AT&T expressed that it wanted to grandfather the service so as not to attract new customers while maintaining existing customers on the service until such point in the future when AT&T would decide to terminate the service. AT&T stated that the reason it could not set forth a date for termination of the service was because AT&T did not anticipate terminating the service. AT&T argued that by grandfathering the service, it was giving existing customers the benefit of remaining on the service while providing certainty to AT&T that no new customers would obtain the service.


The Consumer Advocate argued that AT&T had not demonstrated a need for terminating or grandfathering the service. According to the Consumer Advocate, AT&T offered no proof that fewer people were subscribing, nor as to the inconvenience or the cost to AT&T to maintain the service.

In rendering its findings, the Authority articulated that it would not adopt a rule that an indefinite period of grandfathering is at all times problematic. The Authority will continue to examine matters involving grandfathering on a case-by-case basis. Upon reviewing the record and after hearing the oral arguments of the parties, the Directors were not persuaded by the evidence or arguments that the service should be grandfathered. The Directors expressed that they had not been presented with sufficient facts such as costs or numerical data to determine that the Reach Out Plan should be terminated and grandfathered.

IT IS THEREFORE ORDERED THAT:

1. AT&T of the South Central States, Inc.'s Tariff No. 97-07632 is denied;
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order; and
3. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition Review in the Tennessee Court of Appeals, Middle District, within sixty (60) days from the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary